# HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. 1015 of 2002 (SB)

Smt. Leela Bhaudari
vs.
Central Administrative Tribunal & others

Approved for reporting.

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~~Not approved for reporting~~

Date of decision 22.7.2004

Initial of Judge

Reserved

**HIGH CORUT OF UTTARANCHAL AT NAINITAL**

Writ Petition No. 1015 of 2002 (SB)

Smt. Leela Bhandari ..... Petitioner

Versus

Central Administrative Tribunal & others ..... Respondents

Sri J.C. Pandey, Advocate for the petitoner
Standing Counsel for the respondents.

Dated: July 22, 2004

**Hon'ble Rajesh Tandon, J.**
**Hon. P.C. Pant J.**

**Delivered by Hon. Rajesh Tandon J.**

By the present writ petition the petitioner has challenged the order dated 8.2.2000 passed by the respondent no.4 annexure-7 to the writ petition, order dated 12.4.2002 passed by the Central Administrative Tribunal, Annexure-10 to the writ petition and order dated 16.7.2002 passed by respondent no.4, annexure-12 to the writ petition.

The petitioner has further prayed for a writ of mandamus directing the respondent not to disturb the working of the petitioner on the post of EDBPM Toli (Gurna), District Pithoragarh.

Brief facts giving rise to the present writ petition are that in pursuance of advertisement for vacancy of a post of Extra

Departmental Branch Post Master, Tolli (Gurna) in District Pithoragarh, the petitioner has submitted her application for consideration. She has annexed all the documents required in pursuance of the departmental rules. The selection committee has duly selected the petitioner on the said post and a formal appointment letter was issued by the Superintendent of Post Offices, Pithoragarh on 13.3.2000. The petitioner joined the said post on 25.4.2000. On 9th August 2000, an order was issued by the Superintendent of Post Officers, Pithoragarh by which the petitioner was relieved from her post on the directions of Post Master General, Bareilly on the ground that the appointment of the petitioner was not in accordance with rules.

Aggrieved by the aforesaid order, the petitioner filed a claim petition before the Central Administrative Tribunal which was registered as O.A. No. 908 of 2000. The Tribunal has passed the following order on 18.8.2000:

*"For the reasons stated above, this application is allowed. The order dated 9.8.2000 (Annexure-1) is quashed. The applicant shall be reinstated on her post with all the benefits. however, it is left open to the respondents to pass a fresh order in accordance with law after giving an opportunity of hearing to the applicant.*

*There shall be no order as to costs."*

In pursuance of the aforesaid order Superintendent of Post Offices again issued a show cause notice dated 7.11.2000 in order to fill up the lacuna of the termination order passed earlier. The notice dated 7.11.2000 only shows to the following effect:

1. श्रीमती लीला भण्डारी अ0वि0 न्नाखा डाकघर तौली र्गिुरनाक्रको एततद्वारा सूचित किया जाता है कि अ0 वि0 न्नाखा डाकपाल तौली पर की गयी उनकी नियुक्ति नियमान्तर्गत सही नही पायी गयी है। अतः क्यों न न्नाखा डाकपाल तौली गुरना के पद पर की गयी उनकी नियुक्ति निरस्त कर दी जाय।

2. श्रीमती लीला भण्डारी अ0 वि0 न्नाखा डाकपाल तौली गुना को एततद्व के विरूद्व प्रतिवेदन करने का अवसर दिया है उनका प्रतिवेदन लिखित रूप में अधोहस्ताक्षरित को इस ज्ञापन के प्राप्त होने की तिथि से 15 दिन के भीतर प्राप्त हो जाय।

The petitioner has made representation in pursuance to the show cause notice and the Superintendent of Post Offices has rejected the same on 8.2.2000 and cancelled the appointment of the petitioner with the following order:

श्रीमती लीला भण्डारी के प्रतिवेदन दिनांक 20.11.2000 पर विचार किया गया लेकिन उनका प्रतिवेदन उपयुक्त नही पाया गया क्योंकि उक्त पद हेतु आवेदन करने वाले सभी अभ्यथियों में हाई स्कूल परीक्षा की मेरिट में वह सर्वश्रेप्रछ नही है जो कि चयन हेतु पात्रता का मुख्य आधार होता है, बल्कि 45 प्रतिधात प्राप्तांको के साथ वह मेरिट में तीसरे स्थान पर है।

अतः श्रीमती लीला भण्डारी की अ0 वि0 न्नाखा डाकपाल तौली गुराना के पद पर की गयी अनियमित नियुक्ति को तुरन्त प्रभाव से निरस्त किया जाता है।

The ground of cancellation of the appointment of the petitioner as EDBPM, the petitioner has been shown to have obtained 45% marks in High School. In the show cause notice dated 7.11.2000, no ground was shown with regard to the merit in high school but while canceling the same lacuna was filled up. The petitioner again approached the Central Administrative Tribunal and has challenged the order-dated 8.7.2001. Simultaneously Smt. Sunita Devi also filed a claim petitioner before the Central Administrative Tribunal. The Tribunal on 12.4.2002 has passed the following order:

*"Since, now the respondent no.4 has been issued a notice by the appointing authority and the appointing*

*authority has not found the appointment of Respondent no.4 to be properly made, we find that the applicant in O.A. No. 08/2001 is not entitled to the relief sought by her of cancellation of notice dated 7.11.2000 and order dated 8.2.2002. Therefore, the interim order is withdrawn. O.A. No. 08/2001 is dismissed as locking in merits. The respondents are directed to proceed as per rules for fresh appointment from amongst the candidates who were found eligible in response to notice dated 28.7.1999. O.A. 10/2001 stands disposed of interims of the above order. Compliance of the order shall be made within a period of 3 months from the date of receipt of a copy of the order. No order as to costs."*

The counsel for the petitioner has submitted that she is graduate and qualifies the requirement for appointment on the post EDBPM, the entire orders were passed without hearing the petitioner at any point of time.

On 16.7.2002 order was passed relieving the petitioner in pursuance of the decision of O.A. No. 8 of 2001. Counter affidavit has been filed by Sri J.P. Arya, representing the Superintendent of Post Offices and has stated to the following effect:

> *"That after issuance of the appointment letter in favour of Smt. Leela Bhandari, the entire records were examined by Post Master General, Bareilly and it came to the knowledge that the appointment letter was wrongly issued in favour of the petitioner as she was below in the rank in merit for the said selection and subsequently the said mistake was rectified by canceling the appointment letter of the petitioner and the same was issued subsequently to the candidate who was ranked first on*

*the basis of marks obtained in High School Examination along with other required qualifications as per the comparative chart. In view of the reasons stated above, it is true that due to some inadvertence, the appointment letter was issued in favour of the petitioner though she was below in the rank in the merit. However, the same was rectified subsequently which clearly shows that there is no illegality by canceling the appointment letter of the petitioner."*

Subsequently it has been brought to the notice of the Court by of supplementary counter affidavit that in pursuance of the advertisement all the candidates including the petitioner submitted their applications within time and description has been given as under:

1. Sri Mahendra Singh
2. Sri Trilok Singh
3. Smt. Sunita Devi
4. Smt. Leela Bhandari
5. Sri Samsher Chandra

It has also come to the notice that Smt. Sunita Devi expired on 6th Sept. 2002 and thereafter no knew appointment has been made. The method of recruitment is contained under Section IV which prescribed the Educational Qualifications as under:

2.**Educational Qualification**

| | |
|---|---|
| ED sub Postmasters and<br>ED Branch Postmaster: | Matriculation, (The selection Should be based on the Marks secured in the Matriculation or equivalent examination. No. |

weightage need be given for any
Qualification in higher than
matriculation)

An will appear from the aforesaid rule the qualification for selection on the post of ED Sub Postmaster and Ed Branch Postmaster is matriculation or equivalent examination. As will appear from the facts on record that the petitioner was appointed earlier with open eyes and she joined on 25.4.2000 and there is nothing against her in order to disqualify her. The relieving order passed against her is against the principles of natural justice and the Tribunal has rightly reinstated her by quashing the order dated 9.8.2000.

Since Mahendra Singh who was at Sl. No.2 has not challenged the appointment of the petitioner at any point of time as will appear from the facts on record, the petitioner having been appointed by a valid appointment letter, the respondent no.5 Smt. Sunita Devi who has challenged the appointment of the petitioner has already expired, we have no hesitation to observe that cause of action against the petitioner having already been frustrated, it is no more open for respondent no.3 and 4 not to permit the petitioner to continue on her post of EDBPM.

The maxim of law namely, *actus curiae neminem gravabit* is applicable to the facts of this case. The Apex Court in the case Mohanmmed Gazi vs. State of M.P. & others, JT 2000(4) SC 55 has observed the maxim as under:

*"In the facts and circumstance sof the case, the maxim of equity, namely, actus curiae neminem gravabit- an act of the Court shall prejudice no man, shall be applicable. This maxim is founded upon justice and good sense which serves a safe and*

*certain guide for the administration of law. The other maxim is, lex non cogit ad impossibilia- the law does not compel a man to do which he cannot possibly perform. The law itself and its administration is understood to disclaim as it does in its general aphorisms, all intention of compelling impossibilities, and the administration of law must adopt that general exception in the consideration of particular cases. The applicability of the aforesaid maxims has been approved by this Court in Raj Kumar Dey & ors. Vs. Tarapada Dey & ors. JT 1987 (3) SC 555 and Gursharan Singh & Ors. Vs. NDMC & Ors. JT 1996 (1) SC 647."*

The aforesaid maxim is fully applicable to the facts of the present case as the petitioner was relieved twice after the judgment of the Tribunal for no fault. During selection for the post of EDBPM she produced all documents regarding her educational qualifications and no objection was raised at any stage and merely on the objection or respondent no.5, cancellation order was issued. Now respondent no.5 has already been expired.

We do not find any justification not to continue the petitioner on her post of EDBPM.

In view of the aforesaid facts and circumstances, the writ petition is allowed. A writ of certiorari is issued quashing the order dated 12.4.2002 passed by the Central Administrative Tribunal as well as consequential order dated 16.7.2002. The petitioner shall be reinstated to her post. There will be no order as to costs.

**(P.C. Pant J.)** **(Rajesh Tandon J.)**

July 22, 2004
Dhyani